



# CONSERVATION LAW FOUNDATION

## **Comments of the Conservation Law Foundation Concerning Wind Power Potential for State-owned Lands Public Meetings on June 17 and 24, 2009 in Buzzards Bay and Pittsfield**

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Conservation Law Foundation (CLF) appreciates the opportunity to provide preliminary comments regarding the potential for wind power on state-owned lands. The following reflects CLF's remarks at public meetings held on June 17, 2009 in Buzzards Bay and on June 24 in Pittsfield on this subject.

### **Background Regarding Conservation Law Foundation:**

CLF is a public interest advocacy organization that works to solve the environmental problems that threaten the people, natural resources and communities of New England. Founded in 1966, CLF is a nonprofit, member-supported organization. CLF promotes clean, renewable and efficient energy production in New England and has an unparalleled record of advocacy on behalf of the region's environmental resources. As part of its more than 40-year legacy in the New England region, CLF has prevented drilling for oil and gas on Georges Bank, led the legal effort to clean-up Boston Harbor and other major coastal estuaries, fought to reduce damaging off-road vehicle use on the beaches and dunes of the Cape Cod National Seashore and successfully advanced legal strategies to restore groundfish to the Gulf of Maine and southern New England waters.

CLF's Massachusetts Clean Energy & Climate Change Initiative actively works to reduce the environmental impacts associated with the Commonwealth's energy supply, including by advocating to shut down or clean up the region's fleet of dangerous old fossil fuel-fired power plants, preventing polluting new power plants from being developed, and promoting clean energy solutions including conservation, efficiency and responsible renewable energy.

The backdrop for this work – and the critical context in which wind energy siting must be evaluated – is the compelling challenge of climate change, and the urgent need to transform our energy supply in order to avoid the most dramatic and catastrophic impacts of climate change, including sea level rise, significant public health impacts (from heat related stress to increased

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prevalence of asthma and spread of insect-borne disease), species extinction and the transformation of our natural landscapes. This context is essential. We need to consider not just the impacts of actually building and operating renewable energy facilities, but also the public health, natural resource and other impacts that would occur should we *fail* to deploy new clean energy infrastructure and leave ourselves dependent on dangerous and polluting electric generation sources including the region's fleet of old coal plants.

**Responsibly sited wind energy facilities are an important component of a new clean energy future.** In order to reduce our dependence on greenhouse gas-intensive fossil fuels, we need to transform our electricity supply by promoting efficiency, conservation and clean renewable energy such as responsibly sited wind turbines. Wind energy facilities, including both land-based and offshore projects, have the greatest potential for supplying clean electricity in terms of the magnitude of the available resource, commercial availability of the technology, and cost-effectiveness. If we are going to reduce greenhouse gas emissions by at least 20% below 1990 levels by 2020 and 80% below 1990 levels by 2050 – as we must – it is evident that we will need to significantly expand wind energy generation capacity in Massachusetts. CLF's 2008 "Climate Call to Action" for New England accordingly calls for the development of at least 2000 Megawatts (MW) of new wind energy generation in the region within five years, as a "downpayment" or starting point.

Although some opponents have argued that wind energy somehow is incapable of displacing existing polluting power plants or reducing greenhouse gas emissions, one has only to look at examples like the one set in Hull, Massachusetts where two wind turbines are supplying 11% of that municipality's demand for electricity (and reducing demand for power from traditional sources by a corresponding amount). In addition, because the fuel for wind energy facilities is free, electricity from these facilities is prioritized for bidding into the regional electric grid – meaning that fossil fuel-fired facilities that must pay for their fuel will reduce their operation, burn less carbon-intensive fuel, and emit less greenhouse gas emissions when wind power is supplied to the electric grid.

**Massachusetts must maximize deployment of energy efficiency and conservation measures and promote clean new renewable energy generation.** Some stakeholders argue that Massachusetts should implement all available energy efficiency and conservation measures *before* even considering the development of wind energy projects. But in order to keep our (energy efficient) lights on and our homes and businesses running, we need electricity that not only is efficiently used but also comes from cleaner sources. Ideally, electricity will be provided to Massachusetts consumers from a variety of clean renewable energy resources that are developed while we continue to aggressively promote energy efficiency and conservation.

Massachusetts has long been recognized as one of the top states in the nation for promoting energy efficiency and conservation, even before the Massachusetts Green Communities Act of 2008 was enacted and began requiring electric and gas utilities to prioritize energy efficiency and conservation over the purchase of more expensive electric and gas supplies. Pursuant to this new statutory mandate, the major Massachusetts utilities have proposed energy efficiency plans that will invest approximately \$1.4 billion in efficiency and conservation measures over the next three years alone. Massachusetts already is prioritizing efficiency and conservation, and existing

programs are expected to grow by leaps and bounds over the coming years. Efforts to deploy clean renewable energy generating sources, by contrast, have lagged far behind.

**While Massachusetts has led the way with incentives for renewable energy development, small and moderate-sized wind energy projects face disadvantages in siting and permitting processes.** More than a decade has passed since Massachusetts seized a national leadership role in promoting renewable energy, including wind energy projects, with the adoption of one of the first Renewable Energy Portfolio Standard (RPS) programs in the nation. The Massachusetts RPS, which currently requires 4% of all electricity supplied to Massachusetts consumers to come from new renewable energy generating sources and will require 1% additional new renewable energy per year, provides meaningful financial incentives for renewable energy development. But the permitting processes for electric generating facilities have not been modified to reflect the important objective of promoting cleaner renewable energy facilities over traditional polluting fossil fuel-fired facilities. In fact, large fossil fuel-fired power plants enjoy a distinct advantage because they meet the threshold for permitting before the Massachusetts Energy Facilities Siting Board (EFSB) – which can review and permit projects that have a capacity of 100 Megawatts (MW) or more – whereas the vast majority of renewable energy projects fall well below that threshold and thus are precluded from seeking the advantages of such centralized approvals and consolidated appeals. The unfortunate result of this regulatory system is that smaller clean renewable energy projects that are critical to forward progress often face much more significant regulatory hurdles and more complicated appeals processes than large, predominantly fossil fuel-fired projects. This inequitable and paradoxical permitting scheme flies in the face of the compelling objective of promoting cleaner energy alternatives.

**The pending Wind Energy Siting Reform Act should help level the playing field for wind energy projects and provides important context for the consideration of wind energy development on state-owned lands.** The pending wind energy siting reform legislation that was developed by the Energy Facility Siting Reform Commission pursuant to the Green Communities Act of 2008 and filed with the Joint Committee on Telecommunications, Utilities and Energy in May 2009 is not the focus of the public meetings regarding wind energy siting on state-owned lands, nor are these remarks intended to provide a detailed analysis of the pending bill. However, it is important to note that the legislation (1) will begin to level the playing field for siting wind energy projects by allowing smaller wind energy projects to have access to centralized permitting at the local and state levels; and (2) embraces comprehensive siting standards for wind energy projects in general, and more stringent standards for projects that are proposed for development on state lands that are subject to protection under Article 97 of the Massachusetts Constitution.

**The Wind Energy Siting Reform Act will not – and should not – open up state-owned lands as the path of least resistance for siting wind energy facilities.** Contrary to some inaccurate criticism, the pending Wind Energy Siting Reform legislation would *not* give a “free pass” to wind energy facility development on public lands. Instead, the legislation provides that *stricter* siting standards would be established for wind energy projects that are proposed for development on lands protected under Article 97. The legislation also calls for a one-year study by the Executive Office of Energy and Environmental Affairs to determine which Article 97 lands appear to be appropriate for wind energy development and which lands are not appropriate.

Wind energy development would be flatly prohibited on all Article 97 lands that are found not to be appropriate for such projects. As such, the legislation recognizes the special protections that apply to Article 97 lands, and includes measures to ensure that any development of wind projects on such lands is responsibly undertaken.

**CLF recognizes that wind energy development is likely to be compatible with the stewardship of Article 97 lands in some locations and subject to reasonable protections.**

Lands owned and protected by the Commonwealth under Article 97 of the Massachusetts Constitution serve important public purposes including the protection of clean air, water, other natural resources and recreational uses. As such, we must ensure that the natural resources, recreational uses and other key attributes of these lands are protected. At the same time, we believe wind energy development *can* be consistent with protection of these values on some of the Commonwealth's Article 97 lands.

Moving forward, it will be important to make thoughtful determinations regarding the appropriateness of wind energy siting on various Article 97 lands, taking into account considerations including the following:

- Massachusetts' Article 97 lands are diverse in terms of their size, natural resources, uses, the extent to which they already host infrastructure of various types, etc. It will be important to take a close and informed look at compatibility of wind energy siting on a case-by-case basis for each parcel under consideration.
- The report titled "Commonwealth of Massachusetts Renewable Energy and Energy Efficiency Potential at State-Owned Facilities" (February 2009), by Navigant Consulting, provides a *starting point* for the analysis, not a roadmap for wind energy development on public land. By its own title, the report reflects "potential" wind energy resources, not a plan for actual development.
- The clock is not yet running on the year-long process under the Wind Energy Siting Reform Act for identifying Article 97 lands that are appropriate, and others that are inappropriate, for wind energy development. Once commenced, the process should entail layering significant additional information on the baseline that reflects "potential sites"; among other considerations, the following factors should be addressed:
  - identification of natural resources at each site that may be affected by the development of wind energy projects and associated infrastructure;
  - the extent to which anticipated impacts likely can be mitigated;
  - compatibility of wind energy development with other uses and values for which the lands are protected;<sup>1</sup> and

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<sup>1</sup> It is important to keep in mind that wind energy projects may be compatible with many other uses, by contrast with projects like the LNG facility that was proposed several years ago for development on state and federally protected public land in the Boston Harbor Islands and would have required a significant safety and security "exclusion zone," for example.

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-areas of special significance that are incompatible with wind energy development.

- The *process* by which lands may be designated as appropriate or inappropriate for wind energy development is extremely important. The process should be open and transparent, designed to elicit essential facts and the most reliable data; opportunities for robust public input must be assured.

In addition, it is important to recognize that the constitutional protections afforded by Article 97 will remain – meaning that wind energy projects on Article 97 land must have a valid public purpose, be subject to meaningful environmental review, and succeed in securing a favorable vote from two-thirds of each chamber of the Massachusetts General Court.

### **Conclusion:**

In sum, CLF believes that (1) there is a real and immediate need for responsible wind energy development, in addition to conservation, efficiency and other renewable energy technologies; (2) we must begin to level the playing field – including by advancing wind energy siting reform – to ensure that polluting fossil fuel-fired power plant projects no longer are favored; (3) *all* energy projects have impacts, and we need to maintain protections that will avoid, minimize or mitigate those impacts; (4) there is a place for responsibly sited wind energy projects on some of our state-owned lands; and (5) it is important to ensure that the siting of wind energy facilities on public lands is approached responsibly, through an open and public process resulting in decisions that are based on the best available information and protect the compelling values of our public lands.

We appreciate the opportunity to provide these preliminary comments. CLF expects to actively participate in this process, together with many others who are interested in striking the right balance between protection of our public lands and the deployment of responsibly sited clean wind energy.